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Dear Senator Biden:

Thank you for your letter of July 23, regarding the decision of the Administration to release certain documents concerning the treatment of al-Qaeda and Taliban enemy combatants. You have expressed particular interest in learning the Department's views concerning two memoranda prepared by the Department of Justice, Office of Legal Counsel (OLC), one dated January 22, 2002, entitled "Application of Treaties and Laws to al Qaeda and Taliban Detainees," and a second dated August 1, 2002, entitled "Standards of Conduct for Interrogation under 18 U.S.C. 2340-2340A."

The Department of State had the opportunity to provide comments prior to the preparation of the OLC's memorandum of January 22, 2002 on the status and treatment of al-Qaeda and Taliban Detainees. The Department was not involved in the preparation of the OLC's memorandum of August 1, 2002, concerning the issue of torture in connection with the interrogation of detainees and did not learn of its existence until it was first reported in the press.

In January 2002, there was a vigorous exchange of views among relevant Departments within the Administration on the question of the application of the Geneva Conventions with respect to the conflict with al-Qaeda and the Taliban. The issues were fully debated and ultimately presented to the President who made his decision on February 7, 2002. The President determined that the provisions of the Geneva Conventions apply to the conflict with the Taliban, but not to the conflict with al-Qaeda. Although the President also decided that the Taliban detainees were not entitled to prisoner of war status under the terms of the Third Geneva Convention, he concluded that both the Taliban and al-Qaeda detainees shall be treated "humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva."

The White House has released documents on which the President relied in making that decision. Certainly any consideration given in the future to the

The Honorable
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United States Senate.

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suspension of such treaty obligations would need to include relevant factors under international law as well as under the Constitution. As the President chose not to suspend the Geneva Conventions as between the United States and Afghanistan, however, we do not believe it would be appropriate to delve into the abstract merits of doing so at this time.

With respect to the OLC memorandum of August 1, 2002 and related documents concerning methods of interrogation, we note that at the time of their release on June 22, 2004, the Counsel to the President stated that some of the discussion in the memoranda was irrelevant and unnecessary to support any action taken by the President or other decision-makers. Some of the legal theories reflected in the memoranda were considered overbroad, abstract and subject to misinterpretation, and Judge Gonzales made clear that they would be reviewed and replaced as appropriate. Under these circumstances no purpose would be served in reviewing the merits of an overbroad analysis no longer considered operative or relevant. While we did not participate in the preparation of these memoranda, the State Department has consistently taken the position in interagency discussions that the United States is bound by its international legal obligations, including those pertaining to humane treatment of all persons, whether under treaty or customary international law.

We hope you find this information useful. If we can be of further assistance, please do not hesitate to contact us.

Sincerely,

Colin L. Powell

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Cleared:

L-JHThessin -ok
L/ACV-ERCummings - ok
L/HRR-KMGorove - ok
L/NESA-TABorek; MJDennis - ok
H - PNPetrihos - ok
S/WCI-RWMiller - ok
DRL-MGKozak - ok
D-Rryu - ok
P-ASPatel - ok
S/P-DSMarkey - ok

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